

OCT 01 2018Clerk, U.S. Courts
District Of Montana
Missoula Division

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

ALLIANCE FOR THE WILD
ROCKIES, NATIVE ECOSYSTEMS
COUNCIL,

Plaintiffs,

vs.

LEANNE MARTEN, et al.,

Defendants.

CV 17-21-M-DLC

ORDER

WHEREAS, Plaintiffs Alliance for the Wild Rockies and Native Ecosystems Council challenged the United States Forest Service's approval of the Stonewall Vegetation Project under the Endangered Species Act ("ESA") 16 U.S.C. § 1531 et seq., National Environmental Policy Act ("NEPA") 42 U.S.C. § 4321 et seq., the National Forest Management Act ("NFMA"), 16 U.S.C. § 1600 et seq., and the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 701-706;

WHEREAS, this Court granted Plaintiffs' motion for a preliminary injunction on May 30, 2017, (Doc. 19);

WHEREAS, this Court never reached a determination on the merits because the Park Creek Fire Complex broke out on July 14, 2017, and resulted in a stay of

litigation pending the Forest Service's analysis of the fire's impacts to the project area;

WHEREAS, this Court vacated the Record of Decision for the Stonewall Project and remanded to the Agency for completion of a supplemental environmental impact analysis on the effects of the Park Creek Fire on the proposed project on June 12, 2018 (Doc. 50);

WHEREAS; on June 25, 2018, Plaintiffs filed a motion for attorneys' fees and costs (Doc. 53);

WHEREAS; the Parties, without any admission or final adjudication of the issues of fact or law with respect to Plaintiffs' claims, have reached a settlement that they consider to be a lawful resolution of Plaintiffs' claim for attorneys' fees, costs, and expenses;

WHEREAS, Plaintiffs and Defendants agree that settlement of Plaintiffs' motion for attorneys' fees in this manner is in the public interest and is an appropriate way to resolve the dispute between them;

NOW THEREFORE, the Parties hereby stipulate and agree to the following:

1. Defendants agree to pay a total of \$100,500.00 in full and complete satisfaction of any and all claims, demands, rights, and causes of action pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412(d) and/or any

other statute or common law theory, for all attorneys' fees, costs, and expenses incurred by Plaintiffs in this litigation at the District Court for the District of Montana. Plaintiffs agree to accept this amount in full satisfaction of any and all claims, demands, rights, and causes of action for attorneys' fees and costs incurred in connection with the above-captioned litigation pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412(d), and/or any other statute and/or common law theory, through and including the effective date of this Agreement. Plaintiffs agree that receipt of this payment from Defendants shall operate as a release of Plaintiffs' claims for attorneys' fees and costs in this matter, through and including the effective date of this Agreement.

2. Plaintiffs' release set forth in paragraph 1 is expressly limited to the above-captioned action and does not apply to any other litigation. By this Agreement, Defendants do not waive any right to contest attorneys' fees claimed by Plaintiffs, or their counsel, including hourly rates, in any future litigation, or continuation of the present action. Further, this Agreement has no precedential value and shall not be used as evidence in any other attorneys' fees litigation.

3. Defendants agree to submit all necessary paperwork to the appropriate offices within thirty (30) business days of final execution of the Stipulated Agreement receipt and will make every reasonable effort to provide for such payment to be transmitted within ninety (90) days of the Court's approval of the Stipulated Agreement.
4. Plaintiffs agree that receipt of the amount in Paragraph 1 from Defendants shall operate as a release of any and all claims for attorneys' fees, costs, and expenses that Plaintiffs may seek to pursue in this matter relating to the litigation or settlement.
5. Defendants' payment, as identified in Paragraph 1 above, shall be accomplished by Defendants making an electronic funds transfer in the settlement amount of \$100,500.00 to Plaintiffs' counsel's Interest on Lawyer Trust Account ("IOLTA") on behalf of Plaintiffs in accordance with information that has been provided to Defendants. Plaintiffs agree to send confirmation of the receipt of the payment to counsel for Defendants within 14 days of such payment.
6. Except for the obligations specifically required under this Stipulated Agreement, Plaintiffs agree to hold harmless Defendants in any litigation,

further suit, or claim arising from the payment of the agreed-upon \$100,500.00 settlement amount.

7. Plaintiffs and Defendants agree that this Agreement was negotiated and entered into in good faith and that it constitutes a settlement of fee claims that were contested, denied, and disputed. By entering into this Agreement, neither Plaintiffs nor Defendants waive any claim or defense, except as expressly provided herein.
8. Plaintiffs acknowledge that under 31 U.S.C. §§ 3711, 3716, 26 U.S.C. § 6402(d), 31 C.F.R. §§ 285.5, 901.3, and other authorities, the United States will offset against the attorneys' fee award Plaintiffs' delinquent debts to the United States, if any. See *Astrue v. Ratliff*, 560 U.S. 586 (2010).
9. No provision in this Stipulated Agreement shall be interpreted as a commitment or requirement that Defendants obligate or pay funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other law or regulation.
10. The Agreement contains the entirety of the Parties' commitments with regard to settlement, and is intended to be the final and sole Agreement between them. Plaintiffs and Defendants agree that any prior or contemporaneous representations or understanding not explicitly contained

in this written Agreement, whether written or oral, are of no further legal or equitable force or effect.

11. The terms of this Agreement shall become effective upon entry of an order by the Court approving the Agreement.

12. The undersigned representatives of each party certify that they are fully authorized by the party or parties they represent to agree to the Court's entry of the terms and conditions of the Agreement and do hereby agree to the terms herein.

13. Accordingly the Parties jointly and respectfully request the Court's approval of this Agreement and the Order below.

DATED this 11th day of September, 2018.

Respectfully submitted,

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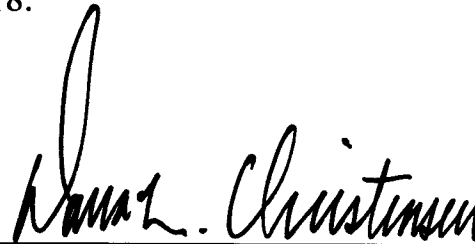
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Attorney for Plaintiffs

Pursuant to the stipulation of the parties, IT IS SO ORDERED.

DATED this 1st day of October, 2018.

A handwritten signature in black ink, reading "Dana L. Christensen". The signature is written in a cursive style with a large, looped initial "D".

Dana L. Christensen, Chief Judge
United States District Court